

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,

Case No. 2:18-cr-00194-APG-VCF

4 Plaintiff

**ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT &
RECOMMENDATION ON MOTION TO
SUPPRESS**

5 v.

6 SERGIO CAIRE DAVILA,

[ECF Nos. 25, 33]

7 Defendant

8 Defendant Sergio Caire Davila filed a motion to suppress the physical evidence seized and
9 the statements he made to law enforcement officers at the time of his arrest. ECF No. 25. After
10 conducting an evidentiary hearing, Magistrate Judge Ferenbach recommended that the motion to
11 suppress be denied. ECF No. 33. Mr. Davila filed an Objection to Judge Ferenbach's Report &
12 Recommendation (ECF No. 34) and the Government filed a Response (ECF No. 36). Pursuant to
13 Local Rule IB 3-2(b), I have conducted a *de novo* review of the motion to suppress and related
14 papers. I also listened to the recording of the evidentiary hearing.

15 I agree with Judge Ferenbach's findings and analysis and adopt it as my own, with one
16 caveat. Judge Ferenbach found that if the search of the documents was not supported by probable
17 cause, then Davila's statement, his DNA, and the gun should be suppressed. ECF No. 33 at 7:22.
18 I disagree. The documents were found in a bag that Officer Milewski was searching for marijuana.
19 In that bag, he also found ammunition. Davila's vehicle had been stopped because it fled the scene
20 of an apparent shooting at a high rate of speed. The officers testified that by the time the bag and
21 ammunition were found, they were aware that Davila had a prior felony. Thus, the ammunition
22 was evidence of at least two possible crimes: a shooting and a felon in possession of ammunition.
23 Thus, the consensual search of the vehicle that followed Davila's detention (based on the

1 documents suggesting an identity theft crime) was not tainted even if the document search was
2 improper because the ammunition supplied an independent justification for detention and a request
3 for a second search. Thus, even if the search of the documents was not supported by probable
4 cause (although I find it was supported by probable cause), Davila's statement, his DNA, and the
5 gun would not be suppressed.

6 IT IS HEREBY ORDERED that Magistrate Judge Ferenbach's Report & Recommendation
7 **(ECF No. 33) is accepted.** Mr. Davila's motion to suppress **(ECF No. 25) is denied.**

8 DATED this 13th day of March, 2019.

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12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
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